



THURS aft. or FRI a.m.
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3672/P1

DAK:cjs:pg

D-NOTE

slays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

Regen Cat

1 AN ACT *to repeal* 51.30 (4) (b) 8g. a., 51.30 (4) (b) 8g. b., 146.82 (2) (b), 146.82 (2)
2 (d) and 146.82 (3) (c); *to renumber and amend* 51.30 (4) (b) 8g. (intro.); *to*
3 *amend* 71.07 (5i) (b), 146.81 (4) and 655.275 (8); and *to create* 51.30 (4) (b) 8g.
4 am., 146.81 (1g), 146.82 (4) and 146.82 (5) of the statutes; **relating to:**
5 treatment records and patient health care records.

Analysis by the Legislative Reference Bureau

INSERT A
This is a preliminary draft. An analysis will be provided on a subsequent version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 51.30 (4) (b) 8g. (intro.) of the statutes is renumbered 51.30 (4) (b)
7 8g. bm. and amended to read:

8 51.30 (4) (b) 8g. bm. To ~~health care providers in a related health care entity, a~~
9 health care provider or to any person acting under the supervision of such a health

the

any of
those
services

test results

of services for
mental illness;
developmental
disability;
alcoholism or drug dependence

care provider, who is involved with an individual's care, if necessary for the current treatment of the individual. Information that may be released under this subdivision is limited to the individual's name, address, and date of birth; the name of the individual's mental health treatment provider; the date of mental health service provided; the individual's medications, allergies, and diagnosis, diagnostic evaluations, and symptoms; and other relevant demographic information necessary for the current treatment of the individual. In this subdivision, "related health care entity" means one of the following:

SECTION 2. 51.30 (4) (b) 8g. a. of the statutes is repealed.

SECTION 3. 51.30 (4) (b) 8g. am. of the statutes is created to read:

51.30 (4) (b) 8g. am. In this subdivision, "diagnostic evaluation" means the results of clinical testing of biological parameters such as laboratory values, radiology tests, and electroencephalograms. "Diagnostic evaluation" does not mean the results of psychological or neuropsychological testing, such as intelligence quotient or personality testing.

SECTION 4. 51.30 (4) (b) 8g. b. of the statutes is repealed.

SECTION 5. 146.81 (1g) of the statutes is created to read:

146.81 (1g) "Health information" has the meaning given in 45 CFR 160.103.

SECTION 6. 146.81 (4) of the statutes is amended to read:

146.81 (4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (e), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records related to sales of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by

1 pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1),
2 or a pupil's physical health records maintained by a school under s. 118.125. "Patient
3 health care records" also includes health summary forms prepared under s. 302.388
4 (2).

5 **SECTION 7.** 146.82 (2) (b) of the statutes is repealed.

6 **SECTION 8.** 146.82 (2) (d) of the statutes is repealed.

7 **SECTION 9.** 146.82 (3) (c) of the statutes is repealed.

8 **SECTION 10.** 146.82 (4) of the statutes is created to read:

9 146.82 (4) RELEASE OF HEALTH INFORMATION TO CERTAIN PERSONS. (a) In this
10 subsection:

11 **1.** "Immediate family" has the meaning given in s. 350.01 (8m).

12 **2.** "Incapacitated" has the meaning given in s. 50.94 (1) (b).

13 (b) Notwithstanding sub. (1), if a patient is incapacitated or is not present, or
14 if an emergency makes obtaining the patient's informed consent impracticable, and
15 if a health care provider determines, in the exercise of his or her professional
16 judgment, that release of the patient's health information is in the best interest of
17 the patient, the health care provider may release portion of the health information,
18 but not copies of the patient's patient health care records, as follows:

19 **1.** To a member of the patient's immediate family, another relative of the
20 patient, a close personal friend of the patient, or an individual identified by the
21 patient, those portions of the patient's health information that are directly relevant
22 to the involvement by the member, relative, friend, or individual in the patient's care.

23 **2.** To any person, those portions of the patient's health information that are
24 necessary to identify, locate, or notify a member of the patient's immediate family or

another person that is responsible for the care of the patient concerning the patient's location, general condition, or death.

SECTION 11. 146.82 (5) of the statutes is created to read:

146.82 (5) REDISCLOSURE. (a) In this subsection, "covered entity" has the meaning given in 45 CFR 160.103. *and except as provided in s. 610.70*

(b) Notwithstanding sub. (1), a covered entity may redisclose a patient's health information *care record* it receives under this section without consent by the patient or person authorized by the patient if the redisclosure is made for a purpose for which a release of ~~health information~~ *the patient health care record* is otherwise permitted under this section. *patient*

(c) Notwithstanding sub. (1), an entity that is not a covered entity may redisclose a patient's health information *patient* it receives under this section only under one of the following circumstances: *care record* *informed*

1. The patient or a person authorized by the patient provides ~~written~~ consent for the redisclosure.

2. A court orders the redisclosure.

3. The redisclosure is limited to the purpose for which the patient's health information *care record* was initially received. *patient*

SECTION 12. 655.275 (8) of the statutes is amended to read:

655.275 (8) PATIENT RECORDS. The council may obtain any information relating to any claim it reviews under this section that is in the possession of the commissioner or the board of governors. The council shall keep patient health care information *records* confidential as required by s. 146.82 (2) (b) (5) (c).

(END)

D-NOTE

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3672/lins
DAK:cjs:pg

INSERT A

or entity

Under current law, certain records related to the health of a patient that are prepared by or under the supervision of a health care provider (patient health care records) are confidential and may be released only with the written consent of the patient or of a person authorized by the patient. This consent (informed consent) must detail the patient's name; the type of information to be disclosed; the types of health care providers making the disclosure; the purpose of the disclosure; the individual to which disclosure may be made; the patient's signature or that of the person authorized by the patient; the date of signature; and the time period during which the consent is effective. Current law has numerous exceptions to the confidentiality requirements that permit access to patient health care records without the informed consent of the patient or of a person authorized by the patient. A health care provider must record the name of the person or agency that receives access, the date and time of the release, and the identification of the patient health care record released. However, redisclosure of information obtained under one of the exceptions is prohibited, unless authorized by a court or under an insurance transaction that authorizes the disclosure of personal medical information about an individual to an insurer.

patient

informed

This bill eliminates current restrictions on redisclosure of a patient's health care record that is obtained under one of the exceptions to the requirements of confidentiality. The bill, instead, authorizes the redisclosure of a patient's patient health care record, if made by a covered entity (as defined in the bill) for a purpose for which a release is otherwise permitted. The bill authorizes an entity that is not a covered entity to redisclose a patient's patient health care record only if the patient or a person authorized by the patient provides ~~written~~ consent, a court orders the redisclosure, or the redisclosure is limited to the purpose for which the patient health care record was initially received. ✓

The bill permits a health care provider to release, without informed consent, some of a patient's health care information, but not the patient's patient health care record, as follows:

1. If the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release, to anyone.

2. If the patient and the person authorized by the patient are incapacitated or not physically available or if an emergency makes it impracticable to obtain agreement from the patient or person, and if the health care provider determines that release is in the best interest of the patient, to (1) a member of the patient's immediate family, another relative, a close personal friend, or an individual identified by the patient, that health care information that is directly relevant to involvement by the person in the patient's care; or (2) any person, if necessary to identify, locate, or notify a member of the patient's immediate family or another person concerning the patient's location, general condition, or death.

Under current law, records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence (treatment records) are confidential and may be released only with the informed consent of the individual. The requirements for the informed consent are similar to the informed consent requirements for patient health care records. However, the confidentiality requirements for treatment records have numerous exceptions that permit access without informed consent. One of these exceptions is for release of treatment records to a health care provider in a related health care entity, or any person acting under the supervision of the health care provider, who is involved with the individual's care, if necessary for the individual's current treatment. Information that may be released under this exception is limited to the individual's name, address and date of birth; the individual's treatment provider; the date of service provided; the individual's medications, allergies, and diagnosis; and other relevant demographic information necessary for the individual's current treatment.

This bill changes the exception to the confidentiality requirements for treatment records to allow access by any health care provider or person acting under the supervision of the health care provider, who is involved with an individual's care, if necessary for the individual's current treatment. The bill expands information that may be released under the exception to include diagnostic test results, as defined in the bill, and symptoms.

FE-S/L

INSERT 3-10

1. "Health information" has the meaning given in 45 CFR 160.103.

INSERT 3-18

(b) Notwithstanding sub. (1), a health care provider may release a portion of a patient's health information, but not copies of the patient's patient health care records to the following, under the following circumstances:

1. To any person, if the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release of the patient's health information.

2. To the following, as applicable, if the patient and person authorized by the patient are incapacitated or are not physically available, or if an emergency makes it impracticable to obtain an agreement from the patient or from the person authorized by the patient, and if the health care provider determines, in the exercise

1 of his or her professional judgment, that release of the patient's health information
2 is in the best interest of the patient:

3

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3672/1dn
DAK:cjs:pg

To Cheryl McIlquham and Kathy Farnsworth:

1. After consulting with Beth DeLair, I changed "written consent" under s. 146.82 (5) (c) 1. to "informed consent".
2. After thinking about it, I deleted the additional exception from the confidentiality requirements that we had discussed making for the injured patients and families compensation fund peer review council under s. 655.275 (8), stats. After rereading that subsection, I believe that the council has obtained the patient health care records as a redisclosure from the commissioner of insurance or the board of governors (which would be able to have access under s. 146.82 (2) (a) 5., stats.), and could redisclose it under s. 146.82 (2) (b), stats. (repealed by the bill) or s. 146.82 (5) (created by the bill). I consulted with Beth DeLair concerning this change, and she agreed.
3. I reconfigured s. 146.82 (4) (b), to make it easier to understand. Please review.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3672/1dn
DAK:cjs:jf

January 18, 2008

To Cheryl McIlquham and Kathy Farnsworth:

1. After consulting with Beth DeLair, I changed "written consent" under s. 146.82 (5) (c) 1. to "informed consent."
2. After thinking about it, I deleted the additional exception from the confidentiality requirements that we had discussed making for the injured patients and families compensation fund peer review council under s. 655.275 (8), stats. After rereading that subsection, I believe that the council has obtained the patient health care records as a redisclosure from the commissioner of insurance or the board of governors (which would be able to have access under s. 146.82 (2) (a) 5., stats.), and could redisclose it under s. 146.82 (2) (b), stats., (repealed by the bill) or s. 146.82 (5) (created by the bill). I consulted with Beth DeLair concerning this change, and she agreed.
3. I reconfigured s. 146.82 (4) (b), to make it easier to understand. Please review.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1/22/08 from Kathy Farnsworth

Add in eff dates:

Treat records: 6mo or 1/1/09, whichever
earlier

Rest: On passage



TODAY 1/22
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3672/12

DAK:cjs:jf

stays

2007 BILL

Gen Cat

1 AN ACT *to repeal* 51.30 (4) (b) 8g. a., 51.30 (4) (b) 8g. b., 146.82 (2) (b), 146.82 (2)
2 (d) and 146.82 (3) (c); *to renumber and amend* 51.30 (4) (b) 8g. (intro.); *to*
3 *amend* 146.81 (4) and 655.275 (8); and *to create* 51.30 (4) (b) 8g. am., 146.82
4 (4) and 146.82 (5) of the statutes; **relating to:** treatment records and patient
5 health care records.

Analysis by the Legislative Reference Bureau

Under current law, certain records related to the health of a patient that are prepared by or under the supervision of a health care provider (patient health care records) are confidential and may be released only with the written consent of the patient or of a person authorized by the patient. This consent (informed consent) must detail the patient's name; the type of information to be disclosed; the types of health care providers making the disclosure; the purpose of the disclosure; the individual or entity to which disclosure may be made; the patient's signature or that of the person authorized by the patient; the date of signature; and the time period during which the consent is effective. Current law has numerous exceptions to the confidentiality requirements that permit access to patient health care records without the informed consent of the patient or of a person authorized by the patient. A health care provider must record the name of the person or agency that receives access, the date and time of the release, and the identification of the patient health care records released. However, redisclosure of information obtained under one of the exceptions is prohibited, unless authorized by a court or under an insurance

BILL

transaction that authorizes the disclosure of personal medical information about an individual to an insurer.

This bill eliminates current restrictions on redisclosure of a patient's patient health care record that is obtained under one of the exceptions to the requirements of confidentiality. The bill, instead, authorizes the redisclosure of a patient's patient health care record, if made by a covered entity (as defined in the bill) for a purpose for which a release is otherwise permitted. The bill authorizes an entity that is not a covered entity to redisclose a patient's patient health care record only if the patient or a person authorized by the patient provides informed consent, a court orders the redisclosure, or the redisclosure is limited to the purpose for which the patient health care record was initially received.

The bill permits a health care provider to release, without informed consent, some of a patient's health care information, but not the patient's patient health care record, as follows:

1. If the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release, to anyone.
2. If the patient and the person authorized by the patient are incapacitated or not physically available or if an emergency makes it impracticable to obtain agreement from the patient or person, and if the health care provider determines that release is in the best interest of the patient, to (1) a member of the patient's immediate family, another relative, a close personal friend, or an individual identified by the patient, that health care information that is directly relevant to involvement by the person in the patient's care; or (2) any person, if necessary to identify, locate, or notify a member of the patient's immediate family or another person concerning the patient's location, general condition, or death.

Under current law, records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence (treatment records) are confidential and may be released only with the informed consent of the individual. The requirements for the informed consent are similar to the informed consent requirements for patient health care records. However, the confidentiality requirements for treatment records have numerous exceptions that permit access without informed consent. One of these exceptions is for release of treatment records to a health care provider in a related health care entity, or any person acting under the supervision of the health care provider, who is involved with the individual's care, if necessary for the individual's current treatment. Information that may be released under this exception is limited to the individual's name, address and date of birth; the individual's treatment provider; the date of service provided; the individual's medications, allergies, and diagnosis; and other relevant demographic information necessary for the individual's current treatment.

This bill changes the exception to the confidentiality requirements for treatment records to allow access by any health care provider or person acting under the supervision of the health care provider, who is involved with an individual's care, if necessary for the individual's current treatment. The bill expands information

BILL

that may be released under the exception to include diagnostic test results, as defined in the bill, and symptoms.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 51.30 (4) (b) 8g. (intro.) of the statutes is renumbered 51.30 (4) (b)
2 8g. bm. and amended to read:

3 51.30 (4) (b) 8g. bm. To ~~health care providers in a related health care entity, a~~
4 health care provider or to any person acting under the supervision of ~~such a~~ the
5 health care provider, who is involved with an individual's care, if necessary for the
6 current treatment of the individual. Information that may be released under this
7 subdivision is limited to the individual's name, address, and date of birth; the name
8 of the individual's ~~mental health treatment~~ provider of services for mental illness,
9 developmental disability, alcoholism, or drug dependence; the date of ~~mental health~~
10 service any of those services provided; the individual's medications, allergies, and
11 diagnosis, diagnostic test results, and symptoms; and other relevant demographic
12 information necessary for the current treatment of the individual. ~~In this~~
13 subdivision, "~~related health care entity~~" means one of the following:

14 **SECTION 2.** 51.30 (4) (b) 8g. a. of the statutes is repealed.

15 **SECTION 3.** 51.30 (4) (b) 8g. am. of the statutes is created to read:

16 51.30 (4) (b) 8g. am. In this subdivision, "diagnostic test results" means the
17 results of clinical testing of biological parameters, but does not mean the results of
18 psychological or neuropsychological testing.

19 **SECTION 4.** 51.30 (4) (b) 8g. b. of the statutes is repealed.

20 **SECTION 5.** 146.81 (4) of the statutes is amended to read:

BILL

1 146.81 (4) "Patient health care records" means all records related to the health
2 of a patient prepared by or under the supervision of a health care provider, including
3 ~~the records required under s. 146.82 (2) (d) and (3) (e),~~ but not those records subject
4 to s. 51.30, reports collected under s. 69.186, records of tests administered under s.
5 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records related to sales
6 of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by
7 pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1),
8 or a pupil's physical health records maintained by a school under s. 118.125. "Patient
9 health care records" also includes health summary forms prepared under s. 302.388
10 (2).

11 **SECTION 6.** 146.82 (2) (b) of the statutes is repealed.

12 **SECTION 7.** 146.82 (2) (d) of the statutes is repealed.

13 **SECTION 8.** 146.82 (3) (c) of the statutes is repealed.

14 **SECTION 9.** 146.82 (4) of the statutes is created to read:

15 146.82 (4) RELEASE OF HEALTH INFORMATION TO CERTAIN PERSONS. (a) In this
16 subsection:

17 1. "Health information" has the meaning given in 45 CFR 160.103.

18 2. "Immediate family" has the meaning given in s. 350.01 (8m).

19 3. "Incapacitated" has the meaning given in s. 50.94 (1) (b).

20 (b) Notwithstanding sub. (1), a health care provider may release a portion of
21 a patient's health information, but not copies of any of the patient's patient health
22 care records, to the following, under the following circumstances:

23 1. Any person, if the patient or a person authorized by the patient is not
24 incapacitated, is physically available, and agrees to the release of the patient's health
25 information.

BILL

1 2. Any of the following, as applicable, if the patient and person authorized by
2 the patient are incapacitated or are not physically available, or if an emergency
3 makes it impracticable to obtain an agreement from the patient or from the person
4 authorized by the patient, and if the health care provider determines, in the exercise
5 of his or her professional judgment, that release of the patient's health information
6 is in the best interest of the patient:

7 a. A member of the patient's immediate family, another relative of the patient,
8 a close personal friend of the patient, or an individual identified by the patient, those
9 portions of the patient's health information that are directly relevant to the
10 involvement by the member, relative, friend, or individual in the patient's care.

11 b. Any person, those portions of the patient's health information that are
12 necessary to identify, locate, or notify a member of the patient's immediate family or
13 another person that is responsible for the care of the patient concerning the patient's
14 location, general condition, or death.

15 **SECTION 10.** 146.82 (5) of the statutes is created to read:

16 146.82 **(5)** REDISCLOSURE. (a) In this subsection, "covered entity" has the
17 meaning given in 45 CFR 160.103.

18 (b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5), a covered
19 entity may redisclose a patient's patient health care record it receives under this
20 section without consent by the patient or person authorized by the patient if the
21 redisclosure is made for a purpose for which a release of the patient health care
22 record is otherwise permitted under this section.

23 (c) Notwithstanding sub. (1), an entity that is not a covered entity may
24 redisclose a patient's patient health care record it receives under this section only
25 under one of the following circumstances:

BILL**SECTION 10**

1 1. The patient or a person authorized by the patient provides informed consent
2 for the redisclosure.

3 2. A court orders the redisclosure.

4 3. The redisclosure is limited to the purpose for which the patient health care
5 record was initially received.

6 **SECTION 11.** 655.275 (8) of the statutes is amended to read:

7 655.275 (8) PATIENT RECORDS. The council may obtain any information relating
8 to any claim it reviews under this section that is in the possession of the
9 commissioner or the board of governors. The council shall keep patient health care
10 ~~information records~~ confidential as required by s. 146.82 ~~(2) (b)~~ (5) (c).

11

(END)

INSERT 6-10

2005

INSERT 6-10

Nonstat File Sequence: **FFF**

LRB _____ / _____

_____ : _____ : _____

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective date.**

(#1) () This act takes effect
on

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective dates**

..... This act takes effect on the day after publication, except as follows:

(#1) ~~✓~~ TREATMENT RECORDS The treatment of
sections 51.30(4)(b)8g, (intro.), a., am., and b.
of the statutes takes effect on the first day of the 7th month beginning
after publication, or on January 1, 2009, whichever is earlier.

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the **9400** department code.

SECTION 94 ____ . **Effective dates;**

(#1) () The treatment of
sections
of the statutes takes effect on

End of
INS 6-10

Kennedy, Debora

From: Kennedy, Debora
Sent: Tuesday, February 05, 2008 8:45 AM
To: McIlquham, Cheryl J - DHFS
Subject: RE: LRB 3672/2

Whether I can draft the changes by Wednesday will depend on their complexity, when I receive them, whether I can reach people with questions, and whether I have something else to do that is a rush that takes higher priority.

Debora

-----Original Message-----

From: Cheryl McIlquham [mailto:McilqCJ@dhfs.state.wi.us]
Sent: Monday, February 04, 2008 5:44 PM
To: Kennedy, Debora
Cc: Farnsworth, Kathleen - DHFS; Webb, Denise B - DHFS; bdelair@meaderoach.com
Subject: LRB 3672/2

Debora,
I wanted to give you a heads up that, tomorrow, we will be requesting a series of technical changes to this draft.

Kathy Farnsworth and/or Beth DeLair will contact you around mid to late morning with the specifics.

We are anticipating that this bill draft will have an author/sponsors and be ready for jacketing on Friday of this week.

Will you be able to draft the changes by Wednesday sometime? Please advise.

Also, fyi, I will be at an offsite meeting much of the morning tomorrow and through the lunch hour. Thus, please be sure to reply to all so Kathy and Beth can stay on top of this.

Thanks so much.

Cheryl

* * * * *

NOTICE: This email and any attachments may contain confidential information. Use and further disclosure of the information by the recipient must be consistent with applicable laws, regulations and agreements. If you received this email in error, please notify the sender; delete the email; and do not use, disclose or store the information it contains.

* * * * *

Cheryl McIlquham, Director
Office of Policy Initiatives and Budget
Wisconsin Department of Health & Family Services
608-266-2907

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

2/5/08

Conversation (phone) w/ Beth De Lin

274-1094

Redraft

07 - 3672/2

✓ ① p. 3 - put comma after first health care provider (l. 4) + delete after 2d (l. 5)

X ② p. 5, l. 4 = substitute ^{semi-colon} ~~comma~~ after "and" -
DAK - unnecessary

X ③ p. 5 - change Redisclosure to Release
DAK - unnecessary

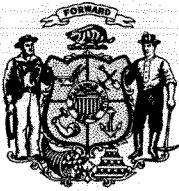
✓ ④ p. 5, ll 21 + 22 - delete "is made for a pump for
w/ a release" + "otherwise"
+ sub "a release"

ok ✓ ⑤ p. 5, l. 24 - remove patient's "patient
health care record" ~~2 DAK unnecessary~~

✓ ⑥ p. 6, l. 3 - add "of record"

✓ ⑦ p. 6, l. 10 - delete "(5)(c)"

X ⑧ 146.82(4) changes ; Cheryl wants technical
changes only



WED. a.m.
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3672/43

DAK:cjs:pg

1
Stays

2007 BILL

SA ✓

Repeal Cat

- 1 AN ACT ~~to repeal~~ 51.30 (4) (b) 8g. a., 51.30 (4) (b) 8g. b., 146.82 (2) (b), 146.82 (2)
2 (d) and 146.82 (3) (c); **to renumber and amend** 51.30 (4) (b) 8g. (intro.); **to**
3 **amend** 146.81 (4) and 655.275 (8); and **to create** 51.30 (4) (b) 8g. am., 146.82
4 (4) and 146.82 (5) of the statutes; **relating to:** treatment records and patient
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Under current law, certain records related to the health of a patient that are prepared by or under the supervision of a health care provider (patient health care records) are confidential and may be released only with the written consent of the patient or of a person authorized by the patient. This consent (informed consent) must detail the patient's name; the type of information to be disclosed; the types of health care providers making the disclosure; the purpose of the disclosure; the individual or entity to which disclosure may be made; the patient's signature or that of the person authorized by the patient; the date of signature; and the time period during which the consent is effective. Current law has numerous exceptions to the confidentiality requirements that permit access to patient health care records without the informed consent of the patient or of a person authorized by the patient. A health care provider must record the name of the person or agency that receives access, the date and time of the release, and the identification of the patient health care records released. However, redisclosure of information obtained under one of the exceptions is prohibited, unless authorized by a court or under an insurance

BILL

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The bill permits a health care provider to release, without informed consent, some of a patient's health care information, but not the ~~patient's~~ patient health care record, as follows:

1. If the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release, to anyone.
2. If the patient and the person authorized by the patient are incapacitated or not physically available or if an emergency makes it impracticable to obtain agreement from the patient or person, and if the health care provider determines that release is in the best interest of the patient, to (1) a member of the patient's immediate family, another relative, a close personal friend, or an individual identified by the patient, that health care information that is directly relevant to involvement by the person in the patient's care; or (2) any person, if necessary to identify, locate, or notify a member of the patient's immediate family or another person concerning the patient's location, general condition, or death.

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This bill changes the exception to the confidentiality requirements for treatment records to allow access by any health care provider or person acting under the supervision of the health care provider, who is involved with an individual's care, if necessary for the individual's current treatment. The bill expands information

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that may be released under the exception to include diagnostic test results, as defined in the bill, and symptoms.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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6 current treatment of the individual. Information that may be released under this
7 subdivision is limited to the individual's name, address, and date of birth; the name
8 of the individual's ~~mental health treatment~~ provider of services for mental illness,
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10 service any of those services provided; the individual's medications, allergies, and
11 diagnosis, diagnostic test results, and symptoms; and other relevant demographic
12 information necessary for the current treatment of the individual. ~~In this~~
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14 **SECTION 2.** 51.30 (4) (b) 8g. a. of the statutes is repealed.

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16 51.30 (4) (b) 8g. am. In this subdivision, "diagnostic test results" means the
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2 of a patient prepared by or under the supervision of a health care provider, including
3 ~~the records required under s. 146.82 (2) (d) and (3) (e),~~ but not those records subject
4 to s. 51.30, reports collected under s. 69.186, records of tests administered under s.
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6 of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by
7 pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1),
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9 health care records" also includes health summary forms prepared under s. 302.388
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15 146.82 (4) RELEASE OF HEALTH INFORMATION TO CERTAIN PERSONS. (a) In this
16 subsection:

17 1. "Health information" has the meaning given in 45 CFR 160.103.

18 2. "Immediate family" has the meaning given in s. 350.01 (8m).

19 3. "Incapacitated" has the meaning given in s. 50.94 (1) (b).

20 (b) Notwithstanding sub. (1), a health care provider may release a portion of
21 a patient's health information, but not copies of any of the ~~patients~~ patient health
22 care records, to the following, under the following circumstances: ✓

23 1. Any person, if the patient or a person authorized by the patient is not
24 incapacitated, is physically available, and agrees to the release of the patient's health
25 information.

BILL

1 2. Any of the following, as applicable, if the patient and person authorized by
2 the patient are incapacitated or are not physically available, or if an emergency
3 makes it impracticable to obtain an agreement from the patient or from the person
4 authorized by the patient, and if the health care provider determines, in the exercise
5 of his or her professional judgment, that release of the patient's health information
6 is in the best interest of the patient:

7 a. A member of the patient's immediate family, another relative of the patient,
8 a close personal friend of the patient, or an individual identified by the patient, those
9 portions of the patient's health information that are directly relevant to the
10 involvement by the member, relative, friend, or individual in the patient's care.

11 b. Any person, those portions of the patient's health information that are
12 necessary to identify, locate, or notify a member of the patient's immediate family or
13 another person that is responsible for the care of the patient concerning the patient's
14 location, general condition, or death.

15 **SECTION 10.** 146.82 (5) of the statutes is created to read:

16 146.82 (5) REDISCLOSURE. (a) In this subsection, "covered entity" has the
17 meaning given in 45 CFR 160.103.

18 (b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5), a covered
19 entity may redisclose a ~~patient's~~ patient health care record it receives under this ✓
20 section without consent by the patient or person authorized by the patient if the
21 redisclosure is ~~made for a purpose for which a release~~ of the patient health care
22 record is ~~otherwise~~ permitted under this section. *a release*

23 (c) Notwithstanding sub. (1), an entity that is not a covered entity may
24 redisclose a ~~patient's~~ patient health care record it receives under this section only ✓
25 under one of the following circumstances:

BILL

1. The patient or a person authorized by the patient provides informed consent for the redisclosure. of record ✓

2. A court orders the redisclosure.

3. The redisclosure is limited to the purpose for which the patient health care record was initially received.

SECTION 11. 655.275 (8) of the statutes is amended to read:

655.275 (8) PATIENT RECORDS. The council may obtain any information relating to any claim it reviews under this section that is in the possession of the commissioner or the board of governors. The council shall keep patient health care information records confidential as required by s. 146.82 (2) (b) ~~(5)(d)~~.

SECTION 12. Effective dates. This act takes effect on the day after publication, except as follows:

(1) **TREATMENT RECORDS.** The treatment of section 51.30 (4) (b) 8g. (intro.), a., am., and b. of the statutes takes effect on the first day of the 7th month beginning after publication, or on January 1, 2009, whichever is earlier.

(END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

2/1/08 From Beth De Lano

- ① Delete def of "health info" p. 4, l. 17
- ② p. 4, l. 21 - ch hi to pt birth
+ p 5, l. 5

9

11

change 146.82(4) accordingly

No other changes at this time



(TODAY 1:00p.m., impossible)

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3672/8 4

DAK:cjs:awn

8/25/07

2007 BILL

SAV

Rege Cat

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BILL

*a portion, but not a copy,
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A PORTION OF
A RECORD

a copy

stays

a

care record

BILL*of a portion*

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care record

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23 redisclose a patient health care record it receives under this section only under one
24 of the following circumstances:

(END)

2/7/08

From Cheryl McLequhan

146.82(4) change "pt heth care record"
in (b) 1. + 2. a. + b. to "that portion"



(NOW)
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3672/4 5

DAK:cjs:pg
+
gf

2007 BILL

Regen

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BILL

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12 necessary to identify, locate, or notify a member of the patient's immediate family or
13 another person that is responsible for the care of the patient concerning the patient's
14 location, general condition, or death.

15 **SECTION 10.** 146.82 (5) of the statutes is created to read:

16 146.82 (5) REDISCLOSURE. (a) In this subsection, "covered entity" has the
17 meaning given in 45 CFR 160.103.

18 (b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5), a covered
19 entity may redisclose a patient health care record it receives under this section
20 without consent by the patient or person authorized by the patient if the redisclosure
21 of the patient health care record is a release permitted under this section.

22 (c) Notwithstanding sub. (1), an entity that is not a covered entity may
23 redisclose a patient health care record it receives under this section only under one
24 of the following circumstances:

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1. The patient or a person authorized by the patient provides informed consent for the redisclosure.

2. A court of record orders the redisclosure.

3. The redisclosure is limited to the purpose for which the patient health care record was initially received.

SECTION 11. 655.275 (8) of the statutes is amended to read:

655.275 (8) PATIENT RECORDS. The council may obtain any information relating to any claim it reviews under this section that is in the possession of the commissioner or the board of governors. The council shall keep patient health care information records confidential as required by s. 146.82 (2) (b).

SECTION 12. Effective dates. This act takes effect on the day after publication, except as follows:

(1) TREATMENT RECORDS. The treatment of section 51.30 (4) (b) 8g. (intro.), a., am., and b. of the statutes takes effect on the first day of the 7th month beginning after publication, or on January 1, 2009, whichever is earlier.

(END)

Basford, Sarah

From: Katie Plona [PlonaKP@dhfs.state.wi.us]
Sent: Thursday, February 07, 2008 4:01 PM
To: LRB.Legal
Subject: Jacketing LRB 3672/5

This email is to request that LRB 3672/5 be jacketed for Rep.Moulton and sent to his office.

Please let me know if there are any questions about this request.

Also, can someone please confirm that you received this email.

Thank you,

Katie

Katie Plona
Legislative Liaison
Department of Health and Family Services
(608) 266-3262
plonakp@dhfs.state.wi.us